REMARKS/ARGUMENTS

Restriction Requirement

The Office has issued a second restriction requirement and required a species election. The Office again alleges that the application is directed to more than one separately patentable invention, and requires restriction of the invention to one of Groups I-V. If one of Groups II or V is elected, the Office also requires a species election.

Elections with Traverse

Applicants elect, with traverse, the claims of Group II (i.e., claims 5, 7, 9-12, and 18-20) for further prosecution. Applicants further elect, with traverse, a viral antigen from among the antigens listed in claim 11. Claims 5, 7, 9-12, and 18-20 are generic to (i.e., encompass) the elected species.

While Applicants have provided an election for the aforementioned specific species, the species election merely is intended to aid the Examiner in the search and examination of the present patent application. The election is by no means indicative of Applicants' willingness to ultimately limit the claims of the present application to this species. As acknowledged in the Office Action, and consistent with an election of species requirement, Applicants are entitled to consideration of additional species encompassed by the generic claims upon a determination that the elected species is patentable.

Discussion of the Restriction Requirement

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent or distinct as claimed, and (ii) there must be a serious burden on the examiner in the absence of restriction. M.P.E.P. § 803. Consequently, as set forth in M.P.E.P. § 803: "If the search and examination of all the claims in an entire application can be made without serious burden, the examiner must examine them on the merits, even though they includes claims to independent or distinct inventions."

In the case at hand, the Office has failed to meet the criteria for a proper restriction requirement and election of species. For example, the claims of Group I and II encompass the administration of IL-21 or an agonist thereof. Thus, the search for any one of these

groups would likely uncover references that would be considered by the Office during the examination of the claims in the other group. This does not mean that the claims necessarily stand and fall together, but simply that the potential relevance of a reference uncovered in one search for all groups mitigates against a restriction requirement. Applicants note that at least claim 5 (which appears in Groups I and II) is generic to and, thus, links the subject matter of the Groups I and II. Indeed, the relationship between the claims of Groups I and II is evidenced by the overlap in claims between Groups I and II (i.e., claims 5 and 20 appear in both groups) and the fact that each of the claims of Groups I and II depend either directly or indirectly on claim 5 or claim 13.

Additionally, the search for a particular species from among viral antigens, bacterial antigens, and parasite antigens (Group II) or JAK1, JAK3, STAT5A, and STAT5B (Group V) likely would uncover references that would be considered by the Office during the examination of the other species within the group.

Therefore, Applicants submit that the requirements for restriction and species election are not proper. Accordingly, Applicants request the withdrawal of the requirements and examination of all of the pending claims, or at the very least, the examination of the claims of Groups I and II.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

Jeremy M. Jay, Reg. No. 33,587
LEYDIG, VOIT & MAYER
700 Thirteenth Street, N.W., Suite 300
Washington, DC 20005-3960
(202) 737-6770 (telephone)
(202) 737-6776 (facsimile)

Date: 2 Aug. 2007